No. 30.

Petition for Rehearing.

Rec'd & dist'd May 31, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 30.

THE RELOJ CATTLE COMPANY, APPELLANT,

vs.

THE UNITED STATES.

PETITION FOR REHEARING OR TO MODIFY JUDGMENT.

HORACE H. COBB,
Attorney for Petitioner and Appellant.

(17,643.)

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PETITION FOR REHEARING OR TO MODIFY JUDGMENT.

The petition of the Reloj Cattle Company respectfully shows that by the decision recently filed in the above cause the rights of petitioner were determined and made to depend upon the laws of Mexico and upon certain proceedings had under the laws of Mexico and of the State of Sonora.

That the said laws were not pleaded in the case as they should have been in order that petitioner might have an opportunity to deny their existence, nor were such laws proven at the hearing as they should have been, being laws of a foreign State.

That by reason of said omissions, the question as to the existence of such laws was not properly brought before the court and was not made subject of proof in the case, and

upon the hearing the court had no assistance from briefs of counsel; wherefore the said questions of foreign law did not have that full and careful consideration which their importance demanded.

And petitioner avers that by reason of the aforesaid inadequate presentation of the case the court has been misled.

That, if given an opportunity, petitioner is able to prove, and will prove, that the law of Mexico relating to grants of *surveyed* land (like the San Pedro grant) is not as stated in the said opinion of this court.

That such a grant as that proven in this case under Mexican law carries title to all the land within the boundaries described in the expediente, and that quantity does not govern in such grants.

In order to obtain satisfactory proof of such laws and of the decisions of the courts of Mexico limiting and construing them, petitioner has caused a communication (a copy of which is hereto attached) to be sent to His Excellency Porfirio Diaz, President of Mexico. Petitioner further shows that the wholly inadequate presentation of this case, both in the Court of Private Land Claims and in this court, was largely due to providential interferences, as follows:

That at the time this suit was commenced the Reloj Cattle Company had but three stockholders, all poor men owning scarcely any property except the land in controversy in this case.

That they employed Milton A. Bretz, of Abilene, Texas, as their attorney to institute these proceedings, and, being too poor to promise money, they gave him a share in the land as his fee.

That after suit was commenced and after Mr. Bretz had employed F. H. Hereford, of Tucson, Arizona, as local assistant, and after he had employed H. G. Howe, of Tombstone, Arizona, to make a survey of the land, and after such survey had been partially completed, Mr. Bretz died suddenly of apoplexy.

That afterwards Mr. Howe, the surveyor, also died, necessitating a resurvey, which was made by Mr. Contzen and barely completed before the case came on for hearing at Tucson.

And petitioner asks the court to consider these misfortunes, and that the land in controversy in this case is of great value; that it has been held by petitioner and those through whom it derives title in undisputed ownership and possession for more than seventy years; that the portion of said grant lying in the State of Sonora, and adjoining plaintiff's land on the south, is still held and occupied under and by virtue of substantially the same title as that on which plaintiff relies in this case.

That the title to the Del Valle grant, which adjoins the San Pedro grant on the north, and which was held under substantially the same title, has also been confirmed by this court as to the valuable part of the grant.

And that plaintiff's claim was denied by the trial court merely because of certain proceedings had under a foreign jurisdiction, under the laws of a foreign country, and entirely without notice to plaintiff.

And petitioner asks the court also to consider that the United States stands foremost among all nations for its great magnanimity and consideration for those dependent upon its good offices.

That there is no adverse claimant, and the United States is only anxious that justice be done.

Wherefore petitioner prays the court that its rights in the premises be not finally determined until opportunity has been given for a more full and satisfactory presentation of its case, when, with proper proofs before the court, and after the vital questions of law in the case have been briefed, the court may do full and exact justice.

To this end petitioner asks that a rehearing be allowed, and that at such rehearing petitioner be allowed to introduce in evidence the laws of Mexico and of the State of

Sonora and the decisions of the Mexican courts construing the same in so far as they affect the questions at issue in this case.

And, if in the opinion of this honorable court the rehearing hereby prayed for cannot justly be granted, petitioner respectfully asks that at least the judgment of this court be so modified as to be without prejudice to the rights of petitioner in any future controversy.

HORACE H. COBB,
Attorney for Petitioner.

STATE OF TEXAS,
County of Tarrant.

Before me, the undersigned authority within and for the said State and county, on this day personally appeared Horace H. Cobb, who, having been by me duly sworn, deposes that he is attorney for petitioner in the above cause and knows the contents of the foregoing petition, and that the statements of fact therein made are true to the best of deponent's knowledge and belief.

HORACE H. COBB.

Sworn to and subscribed before me this 26th day of May, A. D. 1902.

[SEAL.] W. ROUNDS,
Notary Public in and for Tarrant County, Texas.

BRIEF.

Statement of Facts.

Defendant's answer in this case (Record, pp. 15, 16) sets up three defenses:

First. That the San Pedro survey lies wholly south of the international line, "and is thus without the jurisdiction of this court."

Second. That plaintiff's title was not complete and its claim was therefore barred by limitation.

Third. That by denouncement proceedings commenced in 1880 the Mexican government had measured off to the owners of the grant "the area of the cabida legal," and that the claim sued for was thereby "entirely satisfied and discharged by the location of said four sitios within the Republic of Mexico."

The second defense was abandoned, and at the hearing it was admitted that plaintiff's title was good, being substantially the same as the title approved by this court in the Camou or Del Valle case.

The first contention also failed, as it was shown that a part of the San Pedro survey was in Cochise county, as claimed.

The location of the north line of said survey at a certain "bachata gulch" about 7½ miles north of the international line was proven:

First. By evidence of three reputable surveyors, Geo. K. Roskruge (formerly surveyor general of Arizona), H. G. Howe, and Philip Contzen, who made surveys and plats showing its location as claimed, and by other evidence (Record, pp. 18–22–24–177).

Second. By the introduction of the proofs used in abovementioned Camou or Del Valle case (in which it was necessary to prove the north line of the San Pedro grant, because it was given as the south line of the Del Valle grant), and these proofs also established the north line of the San Pedro survey as claimed, at the "bachata gulch." (See United States *vs.* Juan Pedro Camou.)

Third. It thus appears that the owners of the Del Valle and San Pedro grants were fully agreed on the boundary line between the two surveys, and that the owners of the Del Valle grant thus admitted, *against interest*, that the line was at the bachata gulch, as claimed by plaintiff.

Fourth. In the Camou case this court practically sustained this line. Having confirmed the location of the grant as claimed, with its north line at a certain "limy hill," this court could not consistently find the south line of the grant elsewhere than as proven. The distance from its north line at the limy hill to the south line at the bachata gulch, as proven, is 13½ miles. (See San Pedro case, Record, p. 19, evidence of Geo. K. Roskruge.)

In order to find the north line of the San Pedro grant in Mexico (as claimed by defendant's counsel), it would be necessary for the court to stretch the Del Valle tract to make it over 20 miles in length, instead of 13½ miles, as claimed by its owners, and to bring inside the original limits of the grant over 7 miles of river and valley which its owners never claimed.

Fifth. Moreover, even the surveys by Molera and Bonillas, shown on behalf of the defense, sustain plaintiff's claim, and show that both these surveys were made on the theory that a part of the San Pedro grant lay north of the international line (Record, p. 267, 21st line; see Bonillas' map, p. 369).

Molera expressly states that, as noted, "no adjoining

owners have appeared, because the regions to the south, east, and west are vacant lands, and *on the north side the boundary line cuts the San Pedro ranch, one part being in Sonora and the other in Arizona*, so that private parties are at a considerable distance" (Record, p. 267).

Counsel understands that both the Court of Private Land Claims and the Supreme Court practically concede the location as claimed.

This leaves but one defense—that resting on proceedings for denouncement, &c., the third and last point raised in the answer.

Counsel understands that the court sustains this as a good defense, holding, first, that the grant as originally made was limited to four sitios, and, second, that the four sitios which owners of the grant were entitled to had been given them by the Mexican government.

POINTS AND ARGUMENT.

First. The denouncement proceedings were not admissible as evidence. In the proceedings for denouncement Molera was instructed to mark on the ground the lawful area and the overplus, &c., "subjecting his operations to the general laws of July 22 and August 2, 1863" (Record, p. 264).

The land claimed in this case became a part of the United States in 1848.

The law relied upon, therefore, was not one which the court could take cognizance of, but it was necessary for defendant to both plead and prove it in the case. This was not done.

A judge is bound to know the laws of his own State, but not those of a foreign country; nor can he *without proof* ordinarily take cognizance of the laws of such foreign country so far as they differ from his own.

Wharton on Evidence, par. 300.

Greenleaf on Evidence, sec. 486.

Armstrong *vs.* Lear, 8 Peters, p. 73.

There is only one exception to this rule. The court will sometimes take notice of laws existing in acquired territory *prior to the transfer of jurisdiction* (United States *vs.* Perot, 98 U. S., p. 429; United States *vs.* Turner, 11 Howard, p. 668).

The law of Sonora referred to comes within the rule, *not within the exception.*

Second. The court holds that plaintiff's grantors had an interest of four sitios in the land surveyed. It follows that they were, as to the entire grant, tenants in common with the State of Sonora, with right of selection.

When two-thirds of the grant passed under the jurisdiction of the United States it amounted to a conveyance of the State's interest in that part of the grant to the United States. The plaintiff's grantors (the State's cotenants) *retained their proportional interest in each tract.* As to the north part they became cotenants of the United States.

When they conveyed the portion in the United States to James M. Hall, April 2, 1883 (Record, p. 162), he succeeded to their interest and became a tenant in common with the United States as to that part of the grant.

After the land passed under jurisdiction of the United States in 1848 the rights of its owners could not be affected by proceedings conducted in Mexico and under Mexican law.

After the change of jurisdiction in 1848 there were two separate tracts—one in Sonora, one in the United States. Nothing done by the United States could affect title to the Sonora tract.

Nothing done by Sonora could affect title to the tract in the United States.

It follows, as matter of law, that plaintiff still has the same proportional interest in that part of the grant in the United States that its grantors held in the entire tract.

And consistency requires that petitioner's case be treated

according to the principles laid down and followed in the Camou case; that the case be reversed and remanded; that there be set off to plaintiff such a proportion of the tract claimed as the area of four sitios bears to the total area of the grant as proven in the case.

If the Mexican authorities have been generous and have given to the owners of that part of the grant in Sonora more land than rightly belonged to them, it surely is no reason why the United States should take from plaintiff its interest in the land in question.

To hold plaintiff concluded as to its rights because of said denouncement proceedings is to do violence to many well-established principles of law:

First. Because the proceedings were within a foreign jurisdiction.

Second. Because the proceedings were had without notice to the plaintiff.

Third. Because the law under which these proceedings were had was not pleaded or proven and was strictly a foreign law.

Fourth. Because the proceedings connected with the Molera survey were held void, even by the Mexican authorities, and those connected with the Bonillas survey (the only proceedings approved by the Mexican authorities) were not commenced until 1887, about four years after plaintiff acquired title to the land in question, and yet plaintiff was not made a party to such proceedings (Opinion of Supreme Court, p. 9).

Finally, no Mexican law or decision is cited by the court to sustain the ruling that a grant such as the San Pedro was in Mexico a grant by quantity.

The Ainsa case is not a precedent here, because there is a

vital difference between the facts shown in that case and those proven in the case at bar.

In the Ainsa case certain lines of older surveys were mentioned within which applicant was to have seven and one-half sitios of land; and the *very loose character of the survey made* left it doubtful whether the survey was intended to mark the limits of the seven and one-half sitios or the limits of the larger tract out of which the seven and one-half sitios were to be afterwards taken.

In this case there is no chance for such a question to arise. The San Pedro survey was the first in that vicinity.

There is no chance to question the intention of the surveying party. They surveyed the four sitios which were to be sold; made a very careful survey.

It was tied to the ground by calls for natural objects with such skill that no surveyor or expert who has been over the tract claimed has doubted the correctness of the location as platted by Surveyor Contzen. (See evidence of Geo. K. Roskruge, ex-surveyor general of Arizona, Record, pp. 18 and 22.)

If such a survey, with a subsequent sale and a conveyance by field-notes according to the survey, carries in Mexico title to only the quantity mentioned, then all Mexican grants must be grants by quantity, because none can be more definite.

All Mexican grants, in fact all grants, mention quantity. It appears in all grants; in the application for the land; in the award; the survey, and the conveyance.

The amount paid always depends upon the stated quantity, and yet the statement of quantity is never held to be a controlling factor upon which proven boundaries can be disregarded. *Monuments control* (Washburn on Real Property, vol. 3, p. 407).

The rule that boundaries prevail over courses and distances, and that both prevail over statements of quantity, is the very keystone of the arch of real-estate law the world

over. Without this rule all would be chaos. Can we assume that Mexican real-estate laws are in this chaotic condition?

It does not appear that counsel for the Government in this case knows of any Mexican law or any decisions of the Mexican courts sustaining such a theory. None are cited.

But it seems to be assumed that the Sonora statute for denouncement of demasias, &c., is of itself proof that all Mexican grants were grants by quantity. Is it sufficient proof?

In this connection it is noticeable that *these denouncement proceedings, so far as they have come to the notice of counsel, have always been on application of the owner of the survey, and to increase his holding of land, not to cut it short.*

It does not appear that the government of Mexico or the State of Sonora ever deprived a claimant of any land within the proven boundaries of his grant, merely because he had more land than his title papers called for.

The true explanation of the law for denouncement of demasias seems to be this.

Many holders of old grants in Sonora could not prove the boundaries of their claims. They sought to have their corners and lines established by new surveys.

It was no doubt objected that, in establishing their corners, they would naturally be tempted to take in any desirable land adjoining.

To counteract this temptation the law provided that they must pay for all land taken in excess of the amount stated in their title papers.

Apparently the owners might rely upon their established boundaries if they chose to do so, but if they called upon the State to mark out anew the extent of their holdings they must meet such requirements as the State chose to make, one of which was the payment of a nominal price for land in excess, as before stated.

It may be asked why, if they owned all within the old boundaries, were they not asked merely to pay for the land

lying between the old and the new boundaries? The answer is easy.

The new survey implied that the old boundaries were not provable; hence the difference between the old and new boundaries was not provable. Therefore, *to make the law definite*, they were required to pay for the excess above the amount named in the original grant, because that was capable of being exactly determined.

Thus explained, the statute seems to be a fair one. *We have no reason to suppose that it was applied in disregard of established lines or rules of law.*

Certainly it does not, without additional evidence, prove that all Mexican grants were grants by quantity.

It is submitted that, until it is well proven that Mexican courts apply a different rule, lands in the United States should be located in strict conformity with the aforesaid rule, which prevails in all our States.

That the location of the San Pedro survey was proven with reasonable certainty, considering that it was surveyed over eighty years ago, and that the title to plaintiff's portion of it should have been confirmed according to the survey of Mr. Contzen. And, if not entitled to the entire tract claimed, plaintiff should have been awarded such a proportion of its area as the area of four sitios bears to the total area of the grant.

HORACE H. COBB,
Attorney for Petitioner.

APPENDIX.

(Copy.)

FORT WORTH, TEXAS, *May* 20, 1902.

To His Excellency Porfirio Diaz, President of Mexico:

By the treaty of Guadaloupe Hidalgo the rights of purchasers of land who held under Mexican titles were to be fully protected by the United States. It was made clear that both parties to the treaty understood that those persons whose landed property was transferred from the jurisdiction of Mexico to that of the United States should lose nothing by reason of such transfer.

By two decisions just filed the Supreme Court of the United States has denied the rights of claimants to the *full area* of tracts of land measured and sold by the State of Sonora to the Mexican citizens from whom claimants derived their title.

It was admitted in substance in each case that claimants had good title to whatever land was covered by the original grant, but the court held that such original grant was in each case restricted to the exact area mentioned in the expediente, regardless of boundary lines proven and regardless of courses and distances as stated in the field-notes of survey.

The two decisions above referred to will, if not corrected, establish a precedent to be followed in many other cases, and we think it a matter of great moment, both to the thousands of land-holders whose titles will be adversely affected by such decisions, as well as to all the people of the United States who are deeply interested in the stability of their land laws, that the correctness of these decisions be at once questioned by reference to the laws of Mexico and the State of Sonora and the decisions of the Mexican courts.

In neither case did the defendant, The United States, plead or prove the law of Mexico applicable to such cases.

In the case of The Reloj Cattle Co. *vs.* The United States *et al.:* Counsel will at once file petition for a rehearing; asking, among other things, that at the rehearing they be per-

mitted to prove the laws and decisions of Mexico and of the State of Sonora as they apply to such grants as were passed upon in said case.

Under these circumstances, and knowing well your reputation as a most obliging and justice-loving man, I venture to ask your aid. The time allowed us is so short that, unaided, we could not hope to obtain satisfactory proof of the laws of Mexico on which these cases should have been decided.

Will you kindly aid us by referring this communication and the explanatory statements and questions herewith to some learned judge, who is familiar with the laws of Mexico and of the State of Sonora governing the rights of purchasers of such grants as the San Pedro (referred to in the opinion herewith in case of The Reloj Cattle Co. *vs.* The United States), and if possible obtain for us a brief statement of the laws and decisions of the Mexican courts applicable in said case.

Your kindly assistance in this will be most heartily appreciated by the parties interested and their counsel, and I believe it will be of great service to former citizens of Mexico, as well as to all the people of the United States.

Very respectfully yours, ——— ———,

Of Counsel for Claimants.

(Copy.)

LETTER TO HIS EXCELLENCY PORFIRIO DIAZ, PRESIDENT OF MEXICO—EXPLANATORY STATEMENTS AND QUESTIONS.

Facts Shown by the Record in Case of The Reloj Cattle Co. vs. The United States.

Plaintiff showed by grant from the State of Sonora and mesne conveyances a title to that part of the San Pedro grant north of the international line in Cochise county, Arizona.

Plaintiff's title was admitted to be good.

But it was claimed by defendant, first, that the San Pedro grant did not extend north of the said international line.

And, secondly, that, if it was partly in Arizona, as claimed by plaintiff, that it was a grant of 4 sitios only and that by

certain surveys and proceedings had under the laws of Sonora the true cabida legal of 4 sitios had been awarded to the owners in Sonora and that such proceedings were conclusive upon plaintiff.

This second contention was sustained by the court in the opinion herewith.

By actual survey the grant was shown to contain 56,131 acres, of which 38,622 acres were in Cochise county and 17,509 acres in Sonora.

The Supreme Court's opinion holds that, granting the correctness of the survey by Mr. Contzen, the proceedings for the denouncement of the demasias of the grant, and the survey by Bonillas, and the award of the cabida legal of said grant to the parties from whom plaintiff purchased, as set forth in said opinion, took from plaintiff any rights which it had in the premises claimed.

In this connection note the following facts:

That the San Pedro grant was surveyed in 1821.

That five officials represented the State of Sonora in making such survey.

That Elias, who afterwards purchased it, was represented at the survey by his attorney.

That the outer lines of the survey were then established by calls for numerous landmarks (as described in the expediente), and that 14 monuments were placed to mark the boundaries.

That *after* such survey, and after being cried out on 33 days, the land was sold as four sitios of land, &c.

That the land was paid for and title issued (with field-notes of the survey as stated) on May 8th, 1833.

That on May 3d, 1883, Elias and others (the very parties who afterwards obtained the cabida legal, as claimed) conveyed the land in controversy to Jas. M. Hall, from whom plaintiff acquired title.

That at the time of said conveyance to Hall, in 1883, proceedings were pending in Sonora for denouncing the demasias of the grant, but that such proceedings were ineffective, as they culminated in the Molera survey, which (as stated in the Supreme Court's opinion) was disapproved on May 3d, 1887.

Later, on July 4th, 1887, one Bonillas made a survey and both the cabida legal and the overplus were adjudicated in favor of said Elias and associates, and title to the demasias issued to them on February 24th, 1888.

Plaintiff had no notice of the denouncement proceedings.

That said denouncement proceedings were directed to be subject to the general laws of July 22d and August 2d, 1863.

QUESTIONS.

No. 1. The opinion holds in effect that a grant like the one in question conveys only four sitios, an undivided interest in the tract surveyed.

Question *a*. Was this the law of Mexico in 1833, when this grant was completed?

Question *b*. Has it ever been the law of Mexico?

No. 2. The opinion holds that, notwithstanding the fact that title to the grant vested in plaintiff's grantors in *1833*, yet title to plaintiff's portion of it was defeated by proceedings under a statute passed by Sonora in *1863*.

Question. Is a statute permitted such a retroactive construction and effect in Mexico?

No. 3. The opinion holds in effect that, although Elias and his associates conveyed to Hall that part of the grant lying north of the international line (about $\frac{2}{3}$ of it) in *1883* that they could and did afterward, in 1887–'8, get the benefit of the entire cabida legal of the grant.

Question *a*. Is this permissible under Mexican law?

Question *b*. Is it not necessary that all parties interested in the grant have notice of such proceedings?

No. 4. In the United States it is a general rule of law that, in locating lands, boundaries and landsmarks govern first; next, courses and distances called for in the field-notes; and last of all (if neither boundaries nor courses and distances be proven), quantity governs.

Question *a*. Is this rule followed in Mexico?

Question *b*. Does this rule apply there in locating such a grant as the San Pedro?

No. 5. The opinion assumes that the statute of Sonora for denouncing demasias, &c., was properly enforceable in Mexico to cut down the area of a surveyed grant *regardless of boundaries and landmarks proven*.

Question *a*. Is this a correct view of the law of Mexico?

Question *b*. Or does the said statute properly apply only where parties are unable to establish the boundaries of their land, and where it can therefore be applied in conformity to the rule above mentioned?